

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Scott D. Hardy Art Unit : 3671
Serial No. : 10/774,895 Examiner : Tara L. Mayo
Filed : February 9, 2004 Conf. No. : 8757
Title : INFLATABLE CRIB

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Appellant's provide the following additional comments in response to the examiner's Answer on Appeal mailed on September 24, 2007.

(1) Status of Claims

Claim 1 is canceled, and claims 2-32 are pending in the case. Claims 11 and 30 are independent. This is an appeal from the decision of the examiner in a Final Office Action dated November 20, 2006, rejecting pending claims 2-32. Claims 11-14, 19-22, 24-26, and 30-32 were rejected under 35 U.S.C. 103(a) for obviousness over U.S. 3,763,506 ("Szego") in view of U.S. 5,881,408 ("Bashista"). Claim 15 was rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,739,527 ("Kohus"). Claims 16 and 17 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of U.S. 3,137,870 ("Fink"). Claims 18, 27, 2-6, and 8-10 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 5,291,623 ("Artz"). Claims 23, 28, and 29 were rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,815,153 ("Bleser"). Claim 7 was rejected under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser.

Claims 2-32 are the subject of this appeal.

(2) Grounds of Rejection to be Reviewed on Appeal

(i) Did the examiner properly reject claims 11-14, 19-22, 24-26, and 30-32 under 35 U.S.C. 103(a) for obviousness over U.S. 3,763,506 ("Szego") in view of U.S. 5,881,408 ("Bashista")?

(ii) Did the examiner properly reject claim 30 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista?

(iii) Did the examiner properly reject claims 31 and 32 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista?

(iv) Did the examiner properly reject claim 15 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,739,527 ("Kohus")?

(v) Did the examiner properly reject claims 16 and 17 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of U.S. 3,137,870 ("Fink")?

(vi) Did the examiner properly reject claims 18, 27, 2-6, and 8-10 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 5,291,623 ("Artz")?

(vii) Did the examiner properly reject claims 23, 28, and 29 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of U.S. 4,815,153 ("Bleser")?

(viii) Did the examiner properly reject claim 7 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser?

(3) Additional Arguments based on the Examiner's Answer mailed on September 24, 2007

Appellant provides the following comments in response to the Examiner's Answer. In addition to the comments that follow, Appellant refers the board of appeals to the remarks which were filed in the appellant's appeal brief dated June 18, 2007.¹

(i) Rejection of claims 11-14, 19-22, and 24-26 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

As noted in the appellant's brief dated June 18, 2007, for the purposes of this appeal only, claims 11-14, 19-22, and 24-26 may be treated as standing or falling together and claim 11 is representative of this group.

11. A structure comprising:
a base platform configured to support a child;

¹ The fact that the Appellant has addressed certain comments of the examiner does not mean that the Appellant concedes any other positions of the examiner. Rather, the Appellant maintains the previously presented positions which are outlined in the Appellant's appeal brief filed on June 18, 2007.

a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and a protective member sealing the inner, inflatable panels from the child.

The examiner combined two references, namely Szego and Bashista, to reject claim 11. In the appellant's appeal brief, the appellant argued that the examiner failed to provide the necessary motivation to combine Szego with Bashista and that the examiner's reasoning amounted to impermissible hindsight reconstruction. In response, the Examiner stated:

In response to Appellant's argument that a person of ordinary skill in the art of beds at the time of invention would not be motivated to add the crib liner taught by Bashista et al '408 to the inflatable bed of Szego '506 because the primary object of the crib liner is to prevent a child from extending her limbs out of a conventional crib between rigid siderails, the Examiner contends the combination unites known elements (i.e., an inflatable crib and a crib liner) and yields a predictable result (i.e., the containment of a child's limbs within the crib interior). (emphasis added).

According to KSR and as indicated in the Examination Guidelines published in the Federal Register, when considering obviousness of the combination of known elements, the operative question is "whether the improvement is more than the predictable use of prior art elements according to their established functions."² The appellant contends that the claimed invention is more than a predictable use of prior art elements and that the examiner has inaccurately applied the obviousness inquiry. In *KSR*, the court quoted *In Re Kahn* by stating that "rejections on obviousness can not be sustained by mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."³ In the Federal Register, the USPTO provides guidance regarding what rationales would be sufficient to support a finding of obviousness in light of *KSR*.⁴ Of the

² See *Teleflex Inc. v. KSR International Co.*, 550 US at ___, 82 USPQ 1385, 1396 (2007); see also 72 FR 57527

³ Id.

⁴ (A) Combining prior art elements according to known methods to yield predictable results;
(B) Simple substitution of one known element for another to obtain predictable results;
(C) Use of known technique to improve similar devices (methods, or products) in the same way;
(D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
(E) "Obvious to try"- choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
(F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art;
(G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention.

enumerated rationales (e.g., as shown in the footnote), it appears that the examiner is relying on rationale ‘A’ which states “combining prior art elements according to known methods to yield predictable results.”⁵ Regarding this rationale, the Examination Guidelines state “[t]o reject a claim based on this rationale, Office personnel must resolve the *Graham* factual inquiries. Office personnel must then articulate the following... (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately... if any of these findings cannot be made, then this rationale cannot be used to support a conclusion that the claim would have been obvious to one of ordinary skill in the art.”⁶

The examiner has failed to meet this burden. The examiner states that Bashista in combination with Szego yields a predictable result of “the containment of a child’s limbs within the crib interior.” Further, as described in the appellant’s appeal brief, in Bashista the “primary object” of the crib liner is to prohibit a child from extending her limbs out of the crib between the side rails. (See Bashista, column 1, lines 54-56). In contrast, the purpose of the appellant’s protective member is to seal the inner, inflatable panels from the child addressing the risk of suffocation due to collapse of the inflatable side panels. As such, the crib liner in Bashista does not perform the same function as the appellant’s protective member. Therefore, since each element would not have performed the same function as it did separately, the examiner’s rationale outlined above cannot support a conclusion that the claim would have been obvious.

Therefore, the examiner has not properly made a *prima facie* case of obviousness, and the appellant respectfully requests withdrawal of the obviousness rejection of claims 11-14, 19-22, 24-26, and 30 over Szego in view of Bashista.

(ii) Rejection of claim 30 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

The examiner combined two references, namely Szego and Bashista, to reject claim 30.

30. (original) An inflatable crib comprising:
a base platform configured to support a child;
a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and

⁵ 72 FR 57529.

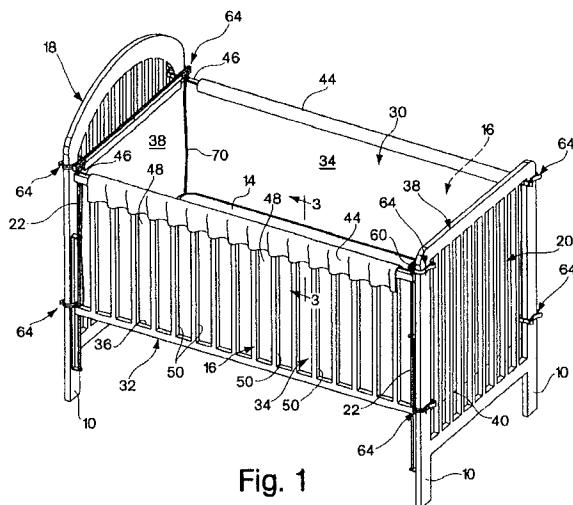
⁶ 72 FR 57529 (emphasis added).

a protective member for obstructing the child's access to the inflatable panels of the crib, the protective member sealing the inner, inflatable panels from the child, thereby preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate.

In addition to the reasons discussed in conjunction with claim 11, the appellant submits that these two references fail to show all of the features of claim 30. In particular, the examiner has failed to show at least the feature of a protective member for “preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate.” In response to the appellant’s previously submitted remarks, the examiner stated:

[T]he examiner contends the crib liner of the apparatus taught by the combination of Szego '506 and Bashista et al. '408 is capable of "preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate" as recited in the claim. While features of the apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function alone.

Bashista whether taken alone or in combination with Szego fails to provide any structure which prevents the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate. As the Examiner concedes, Szego clearly fails to teach a protecting member. Moreover, Bashista relates a crib liner for use with a conventional crib as opposed to an inflatable crib (as shown in FIG. 1 of Bashista reproduced below) and does not contemplate collapse of such a conventional crib.



Bashista does not cure Szego's deficiencies, at least because, like Szego, Bashista does not disclose any structure which prevents the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate. Bashista teaches a "crib liner having side panels made of netting which cover the inside of the crib side rails and having very small openings therein which prohibit a child from putting its fingers or toes therethrough." (See Bashista, Abstract). According to Bashista, the crib liner "fits within the crib and has a bottom panel disposed beneath the mattress and side and end panels that extend upwardly on the inside of the side rails and head board and foot board of the crib." (See Bashista, col. 2, lines 6-10). Bashista's liner is placed in the crib prior to placing the crib mattress in the crib. (See Bashista, col. 2, lines 20-21). As such, after placement of the mattress onto the liner, a space would exist between the Bashista's crib liner and the mattress. Therefore, even if Bashista's crib liner were combined with Szego's inflatable crib, the crib liner would not prevent the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate.

For at least these reasons, claim 30 is allowable over Szego in view of Bashista.

(iii) Rejection of claims 31 and 32 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista

For the purposes of this appeal only, claims 31 and 32 stand or fall together. Claim 31 is representative of this group.

In addition to the reasons discussed in conjunction with claims 11 and 30, the applicant submits that these two references fail to show all of the features of claim 31. In particular, the examiner has failed to show at least the feature of where the "protective member is positioned at a corner region" of the inflatable crib. The appellant's protective member, positioned in the corner region, prevents the child from squirming or rolling into that region where the risk of suffocation is higher should the side panels deflate. As the Examiner concedes, Szego clearly fails to teach a protecting member. Bashista does not contemplate collapse of a conventional crib. Thus, Bashista also fails to teach positioning the protective member specifically at the corner region for addressing the risk of suffocation due to collapse.

Additionally, as described above, Bashista's crib liner has a bottom panel located beneath the mattress and side and end panels that extend upwardly on the inside of the side rails, head board, and foot board of the crib. (See Bashista, col. 2, lines 6-21). As such, Bashista's crib liner is not located in a corner region of the crib, but is instead disposed beneath the mattress and extends upwardly along the sides of the mattress.

In response to the appellant's previously submitted remarks, the examiner responded that the "Appellant failed to define the 'corner region' over the prior art structure." (See examiner's answer, page 13). The appellant contends that one of ordinary skill in the art would understand the "corner region" as defined in the claims. For example, claim 31 defines the corner region as a corner region of the structure and claim 32 defines the corner region as a corner region of the inflatable crib.

For at least these reasons, claims 31 and 32 are allowable over Szego in view of Bashista.

(iv) Rejection of claim 15 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Kohus

Claim 15 is allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Kohus does not cure the deficiencies discussed above in combining Szego with Bashista.

(v) Rejection of claims 16 and 17 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Kohus in further view of Fink

Claims 16 and 17 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Kohus in view of Fink do not cure the deficiencies discussed above in combining Szego with Bashista.

(vi) Rejection of claims 18, 27, 2-6, 8-10 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Artz

Claims 18, 27, 2-6, and 8-10 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Artz does not cure the deficiencies discussed above in combining Szego with Bashista.

(vii) Rejection of claims 23, 28, and 29 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista in further view of Bleser

Claims 23, 28, and 29 are allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Bleser does not cure the deficiencies discussed above in combining Szego with Bashista.

(viii) Rejection of claim 7 under 35 U.S.C. 103(a) for obviousness over Szego in view of Bashista and Artz in further view of Bleser

Claim 7 is allowable over the combination of references for at least the reasons discussed in conjunction with claim 11, and Artz in view of Bleser do not cure the deficiencies discussed above in combining Szego with Bashista.

(4) Claims Appendix

1. (cancelled)
2. (previously presented) The structure of claim 27 wherein each of the side panels is inflatable individually.
3. (previously presented) The structure of claim 27 wherein the plurality of inflatable side panels is configured to be inflatable from a single valve.
4. (previously presented) The structure of claim 27 wherein the base platform is integral to the side panels.
5. (previously presented) The structure of claim 27 wherein the base platform is inflatable.
6. (previously presented) The structure of claim 27 wherein the base platform comprises a plurality of elongated ribs.
7. (previously presented) The structure of claim 27 wherein the base platform is formed of a woven mesh.
8. (previously presented) The structure of claim 27 wherein each of the side panels has a lower end and an upper end, the lower end having a width greater than the upper end.
9. (previously presented) The structure of claim 27 further comprising a pump to inflate the side panels.
10. (previously presented) The structure of claim 27 wherein the panels are configured to be inflated with air.

11. (original) A structure comprising:
 - a base platform configured to support a child;
 - a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and
 - a protective member sealing the inner, inflatable panels from the child.
12. (original) The structure of claim 11, wherein the protective member is formed of woven mesh.
13. (previously presented) The structure of claim 12, wherein the woven mesh is bonded to at least one of the plurality of inflatable side panels.
14. (previously presented) The structure of claim 13, wherein the woven mesh is heat-sealed to at least one of the plurality of inflatable side panels.
15. (previously presented) The structure of claim 12, wherein the woven mesh is stitched to at least one of the plurality of inflatable side panels.
16. (previously presented) The structure of claim 15 further comprising binding tape positioned between the woven mesh and at least one of the plurality of inflatable side panels.
17. (previously presented) The structure of claim 16 further comprising stitching between the binding tape and the woven mesh and between the binding tape and at least one of the plurality of inflatable side panels.
18. (original) The structure of claim 11 wherein each of the side panels is inflatable individually.
19. (original) The structure of claim 11 wherein the plurality of inflatable side panels is configured to be inflatable from a single valve.

20. (original) The structure of claim 11 wherein the base platform is integral to the side panels.

21. (original) The structure of claim 11 wherein the base platform is inflatable.

22. (original) The structure of claim 11 wherein the base platform comprises a plurality of elongated ribs.

23. (original) The structure of claim 11 wherein the base platform is formed of a woven mesh.

24. (original) The structure of claim 11 wherein each of the side panels has a lower end and an upper end, the lower end having a width greater than the upper end.

25. (original) The structure of claim 11 further comprising a pump to inflate the side panels.

26. (original) The structure of claim 11 wherein the panels are configured to be inflated with air.

27. (original) The structure of claim 11 further comprising an inflatable member attached to an outer periphery of the base platform, the inflatable member configured to support the side panels of the structure.

28. (original) The structure of claim 11 wherein at least one of the inflatable side panels further comprises a region formed of woven mesh.

29. (original) The structure of claim 28 wherein each region formed of woven mesh extends to the base panel.

30. (original) An inflatable crib comprising:
a base platform configured to support a child;
a plurality of inflatable side panels extending vertically from and surrounding the base platform, the base platform and side panels defining an enclosure for the child; and
a protective member for obstructing the child's access to the inflatable panels of the crib, the protective member sealing the inner, inflatable panels from the child, thereby preventing the child from squirming or rolling into corner regions of the crib where the risk of suffocation is higher should the side panels deflate.

31. (previously presented) The structure of claim 11, wherein the protective member is positioned at a corner region of the structure.

32. (previously presented) The inflatable crib of claim 30, wherein the protective member is positioned at a corner region of the inflatable crib, thereby preventing the child from squirming or rolling into the corner region where the risk of suffocation is higher should the side panels deflate.

Applicant : Scott D. Hardy
Serial No. : 10/774,895
Filed : February 9, 2004
Page : 13 of 13

Attorney's Docket No.: 40003-004001

(5) Conclusion

The appeal brief fee in the amount of \$250.00 was previously paid, however, please apply any additional charges not covered or credits to Deposit Account No. 50-4189, referencing Attorney Docket Number 40003-004001.

Respectfully submitted,

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Occhiuti Rohlicek & Tsao LLP
10 Fawcett Street
Cambridge, MA 02138
Telephone: (617) 500-2500
Facsimile: (617) 500-2499

Frank R. Occhiuti
Frank R. Occhiuti
Reg. No. 35,306